

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California Water Service Company
(U 60 W) for an Order Authorizing it to Increase
Rates for Water Service in its South San Francisco
District.

Application 03-10-017
(Filed October 1, 2003)

Application of California Water Service Company
(U 60 W) for an Order Authorizing it to Increase
Rates for Water Service in its Stockton District.

Application 03-10-018
(Filed October 1, 2003)

Application of California Water Service Company
(U 60 W) for an Order Authorizing it to Increase
Rates for Water Service in its Mid-Peninsula
District.

Application 03-10-019
(Filed October 1, 2003)

Application of California Water Service Company
(U 60 W) for an Order Authorizing it to Increase
Rates for Water Service in its Salinas District.

Application 03-10-020
(Filed October 1, 2003)

Application of California Water Service Company
(U 60 W) for an Order Authorizing it to Increase
Rates for Water Service in its Bakersfield District.

Application 03-10-021
(Filed October 1, 2003)

Application of California Water Service Company
(U 60 W) for an Order Authorizing it to Increase
Rates for Water Service in its Salinas District
(excluding the service areas of the County
Meadows Mutual Water System and the Indian
Springs Mutual Water System).

Application 03-10-031
(Filed October 1, 2003)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE

In these six proceedings, California Water Service Company (CWS) filed applications seeking ratesetting for five of its water districts (alternative applications submitted for the Salinas District). A coordinated Prehearing Conference (PHC) was held at 1:30 p.m., Tuesday, December 3, 2003, in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California 94102. This ruling determines the scope, schedule, necessity of a hearing, and other matters in accordance with Rules 6(a) and 6.3 of the Commission's Rules of Practice and Procedure (April 2000) (Rules).¹

1. Parties

The parties to these proceedings are CWS, the applicant, and the Office of Ratepayer Advocates (ORA), protestant.

2. Consolidation

These six proceedings involve common issues of fact and law. Upon the request of both parties, these proceedings are consolidated under Rule 55 of the Commission's Rules. The lowest proceeding number, Application (A.) 03-10-017, will be used as the proceeding number for the consolidated cases.

3. Principal Hearing Officer

Pursuant to Pub. Util. Code § 1701.3, Administrative Law Judge (ALJ) John E. Thorson is designated as the principal hearing officer in this proceeding.

¹ The Commission's Rules are available on the Commission's website: www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/8508.htm.

4. Categorization and Need for Hearing

This ruling confirms the Commission's preliminary categorization in Resolution ALJ 176-3121 (Oct. 16, 2003) of this proceeding as ratesetting. This ruling also confirms that evidentiary hearings are necessary as factual issues are in dispute. This ruling, only as to categorization, is appealable under the provisions of Rule 6.4 of the Commission's Rules.

5. *Ex Parte* Communications

Since this is a ratesetting proceeding, *ex parte* communications with the Assigned Commissioner, other Commissioners, and the ALJ are generally prohibited. The limited exceptions to this prohibition are described at Pub. Util. Code § 1701.3(c) and Rule 7.

6. Scope of the Proceeding

By separate applications, now consolidated, applicant originally sought the Commission's approval of rate adjustments for years 2004 through 2007 for each of five water districts: South San Francisco, Stockton, Mid-Peninsula, Salinas (alternative applications), and Bakersfield. The applicant also seeks interim rate increases effective July 1, 2004, and certain water quality determinations that are discussed in more detail in Section 7, *infra*.

Pursuant to an agreement with ORA, applicant has agreed to dismiss the applications filed for Stockton, Mid-Peninsula, and Salinas. Before the applications are dismissed, however, the applicant requests Commission authority to establish water quality memoranda accounts for the Stockton and Salinas districts. While ORA supports the dismissal of these applications, it has filed protests to the Stockton, Mid-Peninsula, and Salinas applications pending their dismissal.

ORA also protests the remaining applications for the South San Francisco and Bakersfield districts and questions whether the proposed rate increases are just and reasonable and in the public interest. Consideration of these applications involves an examination of water sales and revenues, operations and maintenance expenses, general office expenses and financial requirements, utility plant, depreciation, rate base, revenue requirements, and the rate of return.

7. Water Quality Issues

In each of the applications, applicant requests that the Commission determine that each respective district is in compliance with applicable state and federal water quality standards, as well as the Commission's General Order 103. This request is routinely made in ratemaking cases involving water companies, and this issue will be included in the specific issues to be addressed in this proceeding.

Five of the applications, however, raise a somewhat unique water quality issue. For all districts except Mid-Peninsula, the applicant reports that water quality testing in certain wells in those four districts indicates that the action level for 1,2,3 Trichloropropane (TCPA) has been exceeded in those wells. The action level is a health-based advisory level specified by the California Department of Health Services (DHS) for chemicals in drinking water for which maximum contaminant levels (MCLs) have not been established. TCPA is a solvent that has caused cancer in animals and is reasonably anticipated to be a human carcinogen. Applicant represents that some, if not all, of the tainted wells have been removed from service.

In its original applications for South San Francisco, Stockton, Salinas, and Bakersfield, applicant asks the Commission to find that water service exceeding

the action level for TCPA “does not constitute a threat to public health.” As discussed at the PHC, this requested finding is infeasible within this proceeding’s current scope since the Commission does not have the toxicological expertise to determine the public health effects of chemical exposure. As an alternative, it may be feasible and legally appropriate for the Commission to decide, based on the amount of TCPA shown to be in these wells, what measures are required under the Commission’s decisions and orders and DHS’s guidelines.

While seeking to dismiss the Stockton and Salinas applications, applicant requests authority to establish water quality memoranda accounts for these districts. Applicant estimates that more than \$23 million will be spent on water quality mitigation in these districts during 2004 and 2005.

The Commission is required to ensure quality of service provided by public utilities. *See* Pub. Util. Code § 451. The Commission is now aware that the presence of TCPA exceeds the state action level in wells located in four districts, including the two districts for which dismissal is sought. The Commission cannot consider the dismissal of the Stockton and Salinas applications until more is known about this water quality issue. Otherwise, this problem would be deferred until CWS refiles its ratesetting applications for these districts pursuant to our water general rate case plan.

Consequently, an expedited evidentiary hearing should be held to provide the Commission with additional water quality information for the South San Francisco, Stockton, Salinas, and Bakersfield districts; to determine what measures the Commission should undertake; and, if the Stockton and Salinas applications are to be dismissed, to decide under what terms and conditions the dismissals will be allowed.

8. Specific Issues to Be Addressed

The specific factual and legal issues to be decided in this proceeding are as follows:

- a. Is applicant entitled to interim rate relief under Pub. Util. Code § 455.2, effective July 1, 2004?
- b. Are the estimated revenues, expenses, rate base, and rate of return just and reasonable?
- c. Is the proposed rate design in the public interest?
- d. Is applicant in compliance with applicable state and federal water quality standards, and the Commission's General Order 103, in each of the districts?
- e. Is it feasible and legally permissible for the Commission to decide, based on the amount of TCPA shown to be in district wells, what measures are required under the Commission's decisions and orders and DHS's guidelines?
- f. If the answer to Issue 8(e) is in the affirmative, what measures should the Commission order to mitigate the TCPA-tainted wells?
- g. Should the applicant be authorized to recover amounts previously booked to water production balancing accounts?
- h. Should the applicant be authorized to recover amounts previously booked to general office synergy memoranda accounts?
- i. Should the applications for the Mid-Peninsula, Stockton, and Salinas districts be dismissed and, if so, under what terms and conditions?
- j. As for the Bakersfield District, should the applicant be authorized to file an application for general rate relief earlier than 2006 in the event that the State of California promulgates a maximum contaminant level for arsenic that is lower than the federal standard of 10 parts per billion ?
- k. Other issues designated by the principal hearing officer and necessary to the full consideration of the applications.

9. Schedule

The schedule for this proceeding follows.

A Public Participation Hearing (PPH) will be held for customers of the South San Francisco District. Depending on state budget limitations, PPHs may be held for the Bakersfield District. In the alternative, a PPH may be held for the Bakersfield District using telephone conference call and/or Internet technologies.

Applicant shall work with the Commission's Public Advisor and ORA to determine the actual dates, locations, and format for any PPHs and to ensure that proper and timely notice is provided for the PPHs.

The ALJ may also schedule, with the concurrence of the parties, site visits of one or more districts.

Event	Date
PHC	December 2, 2003
CWS files Motion to Establish Memoranda Accounts Upon Withdrawal of A.03-10-018, 03-10-019, 03-10-020 & 03-10-031	December 2, 2003 Responses & replies pursuant to normal rules
CWS motion for evidentiary hearing and relief concerning elevated TCPA levels in 4 districts, attaching expert witness report and/or prepared testimony	January 2, 2004
ORA response to CWS's TCPA motion; submission of expert witness report and/or prepared testimony, if prepared	February 2, 2004
CWS files motion for interim rate relief under Pub. Util. Code § 455.2	February 2, 2004 Responses & replies pursuant to normal rules. No oral argument on motion.
Evidentiary hearing on TCPA water quality issues & CWS's Motion to Establish Memoranda Accounts Upon Withdrawal of Applications	February 10, 2004, commencing at 9:00 a.m.
Possible Public Participation Hearings in South San Francisco & Bakersfield districts	Between February 17 and March 11, 2004
ORA serves testimony	February 23, 2004
CWS serves rebuttal testimony	March 8, 2004
Settlement discussions commence (CWS to provide prior written notice to all parties of date, time and place pursuant to Rule 51.1)	March 12, 2004
Parties file final prehearing conference statement including draft joint comparison exhibit & report on settlement discussions	March 18, 2004

Event	Date
Final PHC	March 19, 2004, commencing at 10:00 a.m.
Mark exhibits with assigned ALJ	March 22, 2004, commencing at 3:00 p.m.*
Evidentiary hearing on all remaining issues	March 23-26, 29-30, from 9:00 a.m. to 3:00 p.m. each day
Filing of final post-hearing joint comparison exhibit	April 16, 2004
Filing of opening briefs	April 26, 2004
Filing of reply briefs	May 3, 2004
Proposed decision mailed	June 28, 2004
Comments on proposed decision	July 19, 2004
Reply comments	July 29, 2004
Commission consideration	August 19, 2004
Unless otherwise indicated, all hearings will be held in Commission hearing rooms, 505 Van Ness Ave., San Francisco, CA 94102 *Exhibit marking with occur in Room 5012 of the Commission offices in San Francisco. Please check-in with guard on 1 st level.	

10. Discovery

If the parties have discovery disputes they are unable to resolve by meeting and conferring, they shall raise these disputes under the Commission's Law and Motion procedure. *See* Resolution ALJ-164 (Sept. 16, 1992).

11. Intervenor Compensation

Pursuant to Pub. Util. Code § 1804(a), the deadline for notices of intent to claim compensation is extended, for customers in each district, until 35 days after applicant has filed proof of mailing of the § 454(a) notice for that district.

12. Service Lists/Filing and Service of Documents

The official service list for this proceeding is attached to this ruling. The parties shall notify the Commission's Process Office of any address, telephone or electronic mail (email) change to the service list. The updated service list is

available on the Commission's web page maintained for this proceeding:
www.cpuc.ca.gov/published/proceedings/A0310017.htm.

The parties have agreed to distribute all pleadings and testimony in electronic form to the ALJ (jet@cpuc.ca.gov) and those parties who have provided an email address to the Process Office. This stipulation does not vacate the Commissioner's rules regarding filing of paper copies, Rule 2.5; the need to serve paper copies on any party without an electronic mail address; and the need to serve paper copies of any document that cannot be electronically distributed.

Therefore, **IT IS RULED** that:

1. The proceedings are consolidated.
2. The parties, scope of proceedings, specific issues to be addressed, and service list are set forth in paragraphs 1, 6-8, and 11, above.
3. Administrative Law Judge John E. Thorson is the principal hearing officer.
4. The Commission's preliminary categorization of this proceeding as ratesetting, in Resolution ALJ 176-3121 (Oct. 16, 2003), is confirmed. An evidentiary hearing is required.
5. The *ex parte* prohibition of Pub. Util. Code § 1701.3(c) applies to this proceeding unless otherwise allowed under § 1701.3(c) and Rule 7.
6. The schedule for the proceeding is set forth in paragraph 9.
7. Discovery disputes will be resolved pursuant to paragraph 10.
8. Any notice of intent to claim intervenor's compensation for each district must be filed within thirty-five days following the filing of the proof of mailing by applicant of the notice required by Pub. Util. Code § 454(a) for that district.

Dated December 5, 2003, at San Francisco, California.

/s/ SUSAN P. KENNEDY

Susan P. Kennedy
Assigned Commissioner

/s/ JOHN E. THORSON

John E. Thorson
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated December 5, 2003, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.